

Unreportable
IN THE HIGH COURT OF DELHI AT NEW DELHI
WP (C) No. 12429 of 2004
Reserved on : April 23, 2008
Pronounced on : May 30, 2008

Anju Sethi . . . Petitioner

through : Mr. S.C. Singhal, Advocate

VERSUS

Union of India & Ors. . . . Respondents

through : Mr. R.V. Sinha, Advocate

CORAM :-
THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The petitioner was appointed as Warden in Rural Health Training Centre, Najafgarh, New Delhi (hereinafter referred to as the 'Training Centre') vide Memorandum dated 1.12.1989. Post of Warden in the said Centre carries the pay scale of Rs.1400-2300. This pay scale is revised to Rs.4500-7000 with effect from 1.1.1996 on the recommendations of the Fifth Central Pay Commission. Thus, she started getting the revised pay scale with effect from 1.1.1996. While the petitioner had been working in the aforesaid post of Warden in the Training Centre, she found that Directorate General of Health Services, Nursing Section, Nirman Bhawan, New Delhi had issued advertisement for filling up of the post of Assistant Warden in Lady

Reading Health School (for short, 'Health School') on 6.12.1999. As per the said circular, for the post of Assistant Warden pay scale of Rs.4500-7000 was provided. She found that the post of Warden in the said school carries the pay scale of Rs.5500-9000. She also came to know that Home Sisters in Raj Kumari Amrit Kaur College of Nursing (hereinafter referred to as the 'Nursing College') were drawing pay in the pay scale of Rs.5500-9000. The post of Home Sister is equivalent to Warden. The petitioner perceived it as discriminatory *qua* her since she was also a Warden, pay scale given to her was Rs.4500-7000, which was the pay scale of Assistant Warden in the Health School. She, therefore, made representation dated 7.8.2000 requesting to upgrade her pay scale to Rs.5500-9000 on the ground that her counterparts in the Health School as well as Nursing College were getting the said pay scale. Her representation was considered but rejected on the ground that the post of the petitioner was not comparable to the post of Home Sister in the Nursing College and Warden in the Health School "*as the size of these institutions, number of inmates and nature of courses conducted by respective institutions are altogether different*". The petitioner, in these circumstances, approached the Tribunal by filing an application under Section 19 of the Administrative Tribunal Act, 1985 in the year 2003. However, she has not been successful in her attempt as vide impugned judgment dated 17.2.2004, her claim has been rejected by the Tribunal. Challenging that order, the present

writ petition is the further attempt of the petitioner to claim this relief.

2. The case set up by the petitioner is that Warden in the Training Centre is equal to the Warden/Home Sister in the Health School and Nursing College in all respects. They impart same training and education and are both under the command and control of Directorate General of Health Services, New Delhi. It is pointed out that as per para 69.45 of the Central 5th Pay Commission Report, the Home Sisters with the same essential qualifications of degree in Home Science (which is same as that of the petitioner herein) working in Nursing College were prescribed the pay scale of Rs.5500-9000. Great emphasis is laid on the duties and qualifications of Warden in Training Centre and Nursing College which are the same. It is pointed out that, if at all, Warden in the Training Centre has more onerous duties as she has to perform these duties single handedly as compared to Home Sister in Nursing College. It is because of the reason that there are three Home Sisters in the Nursing College whereas the petitioner single handedly performs her job as she is the lone Warden in the Training Centre.
3. We find from the impugned judgment of the Tribunal that in the reply to the OA filed by the petitioner, the respondents had disputed the aforesaid claim of the petitioner by stating as under :-

“It is further submitted that the following submissions amply clarify the status of RAKCH and the duties and responsibilities of the post of Home Sisters and Assistant Home Sisters in the RAKCH which is much higher than the post of Warden in

RHTC. RAKCN is a premier institution for providing academic impute for a Nursing Career, which is affiliated to Delhi University. This is the only Central Govt. Deptt. Institution offering degree and above courses in Nursing, which brings it at par with to that of AIIMS, New Delhi and PGIMER, Chandigarh. It prepares Nurses for BSC (Nursing Degree, basic and post basic); PG Nursing Degree, M. Phil and Diploma in Nursing Education and Admn. Programme. Besides, its School of Nursing imparts Diploma qualification in Nursing and Midwifery. Its total hostel intake exceeds more than hundred of students per year at all levels having qualification from post graduate down to 10+2 level entry, whereas, in RHTC, it provides only a two years vocational ANM certificate course of 10+2 level to the students of 10th standard under the age group of 16-18 and its per year intake is 20 only. Thus, total hostel intake never exceed 40 after taking both 1st year and final year students and therefore, RHTC, in no way may claim status to that of RAKCN and consequent parity of post of Warden and Home Sister.”

4. It was also argued that the Warden in the Training Centre, i.e. the petitioner, is also provided rent-free accommodation. Further, the Work Study Unit had recommended that one post of Home Sister in Nursing College be upgraded to Hostel Superintendent in the pay scale of Rs.2000-3500 but there was no such recommendation insofar as the petitioner’s case is concerned. It was also argued that comparison of the duties, qualifications etc. was the job of an expert body like the Pay Commission and the Court was not to go into the details and indulge into this exercise.
5. The learned Tribunal accepted the aforesaid version and defence of the respondents and dismissed the OA filed by the petitioner herein for the reasons which are contained in para 6 of the impugned judgment. We extract this para in order to appreciate the basis of the opinion of the Tribunal :-

“6. The applicant was appointed as Warden in the pay scale of Rs.1400-2300. After the implementation of Vth Pay Commission’s report, this pay scale has been revised to

Rs.4500-7000 w.e.f. 01.01.1996. Merely because the qualification of the applicant is similar or equivalent to Home Sisters of RKAKCN, it does not mean that the applicant should be given the same pay scale. In any case, this is not in the domain of this Tribunal to examine the parity of pay scale which is to be done through expert body like Pay Commission etc. In any case, there is no evidence to show that any hostile discrimination is meted out to the applicant as compared to similarly placed other Wardens in the respondent organization. The contention of the applicant that she was performing duties 24 hours also is not a relevant factor. This is a matter which the administration has to decide keeping in view the needs of the institution. On merits, therefore, there is no case made out for any interference by this Tribunal. So far as the observations of the respondents regarding the application being time barred is concerned, there is no substantial delay. In any case, we have condoned the delay for the reasons advanced by the applicant.”

6. We may also note that in the counter affidavit filed to this writ petition, the respondents have also clarified that the post of Home Sister and Assistant Home Sister in Nursing College were in same grade, whereas Home Sister was a promotional post to Assistant Home Sister. The Work Study Unit has justified the creation of the post of Hostel Superintendent in the College. The Fifth Central Pay Commission recommended that since the post of Home Sister is a promotional post for the Assistant Home Sister, it should be upgraded to the scale of Rs.1640-2900 (corresponding to Rs.5500-9000). As far as the intake and nature of training is concerned, the Nursing College in comparison is not equal to Training Centre and, therefore, Home Sister of Nursing College is not equal to the Warden at Training Centre. The respondents have also stated that the main reason for making the representation for higher pay scale was the advertisement issued for the post of Assistant Warden at Health School, which carries the pay scale of Rs.4500-7000. However, the

said post has not been filled since 1993 and, therefore, the same has been deemed '*lapsed*'.

7. When we take these factors into consideration and the justification because of which the post of Home Sister was upgraded to the higher pay scale on the specific recommendation of the Fifth Central Pay Commission, we are of the opinion that the case of the petitioner is not comparable with the Home Sister in the Nursing College. There was specific reason for upgrading the pay-scale, namely, Home Sisters and Assistant Home Sisters were in the same pay scale, though Assistant Home Sister was feeder cadre for promotion to the post of Home Sister. This anomaly was sought to be removed. That apart, there are various other dissimilarities shown by the respondents, which would disqualify the petitioner for her claim for a higher salary. It has been reiterated by the Apex Court time and again that the exercise of parity in the two posts to decide as to whether principle of '*equal pay for equal work*' is applicable or not, is to be left to the Pay Commissions or the expert bodies. We may usefully quote from the judgment of the Supreme Court in ***S.C. Chandra & Ors. v. State of Jharkhand & Ors.***, (2007) 8 SCC 279 the following excerpts :-

“26. Fixation of pay scale is a delicate mechanism which requires various considerations including financial capacity, responsibility, educational qualification, mode of appointment, etc. and it has a cascading effect. Hence, in subsequent decisions of this Court the principle of equal pay for equal work has been considerably watered down, and it has hardly ever been applied by this Court in recent years.

27. Thus, in *State of Haryana v. Tilak Raj*, (2003) 6 SCC 123 it was held that the principle can only apply if there is

complete and wholesale identity between the two groups. Even if the employees in the two groups are doing identical work they cannot be granted equal pay if there is no complete and wholesale identity e.g. a daily-rated employee may be doing the same work as a regular employee, yet he cannot be granted the same pay scale. Similarly, two groups of employees may be doing the same work, yet they may be given different pay scales if the educational qualifications are different. Also, pay scale can be different if the nature of jobs, responsibilities, experience, method of recruitment, etc. are different.

28. In *State of Haryana v. Charanjit Singh* discussing a large number of earlier decisions it was held by a three-Judge Bench of this Court that the principle of equal pay for equal work cannot apply unless there is *complete and wholesale identity* between the two groups. Moreover, even for finding out whether there is complete and wholesale identity, the proper forum is an expert body and not the writ court, as this requires extensive evidence. A mechanical interpretation of the principle of equal pay for equal work creates great practical difficulties. Hence in recent decisions the Supreme Court has considerably watered down the principle of equal pay for equal work and this principle has hardly been ever applied in recent decisions.”

Thus, to claim parity the petitioner is to satisfy the test of *complete and wholesale identity* between the two groups. The petitioner has not been able to demonstrate the same.

8. The dicta laid down in the aforesaid judgment is reiterated by the Supreme Court in a recent case which is reported as *Union of India & Ors. v. Hiranmoy Sen & Ors.*, (2008) 1 SCC 630. We, therefore, are of the opinion that there is no error in the approach adopted by the learned Tribunal, which was in conformity with the principles laid down by the Apex Court in the aforesaid judgments. This writ petition is, accordingly, dismissed. No costs.

(A.K. SIKRI)
JUDGE

(J.R. MIDHA)
JUDGE

May 30, 2008
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